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Order 2001-4-31

Served: April 27, 2001



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 27th day of April, 2001

In the matter of the revocation of the commuter air
carrier authority issued to

CASINO AIRLINES, INC.

Docket OST-00-7674 - 7

pursuant to 49 U.S.C. 41738 and 40109

**ORDER REVOKING COMMUTER AIR CARRIER AUTHORIZATION,
DISMISSING APPLICATION FOR FITNESS REDETERMINATION,
AND CANCELLING EXEMPTION**

By this order, we are revoking Casino Airlines, Inc.'s dormant authority to provide service as a commuter air carrier, cancelling its *pendente lite* exemption to operate scheduled passenger service, and dismissing its application for a redetermination of its fitness to operate as a commuter.

Background

By Order 97-3-21, issued March 17, 1997, Casino was found fit to conduct scheduled passenger operations as a commuter air carrier. Casino operated such service until June 10, 1999, when its insurance was cancelled and it ceased all operations. As a result of this cessation, we notified Casino on June 17, 1999, that, in accordance with section 204.7 of our rules (14 CFR 204.7), its commuter authority was suspended.¹ Due to the cancellation of its insurance, the suspension also applied to Casino's Part 298 air taxi authority.

On June 30, 1999, Casino filed a request for a waiver of the 45-day notice provision of section 204.7 in order to resume scheduled passenger operations. On July 1, 1999, we informed the

¹ Section 204.7 provides that, if a commuter air carrier ceases conducting the operations for which it was found fit, willing, and able, its authority to conduct those operations is automatically suspended as of the date that those operations ceased. It further provides that, once a carrier's commuter authority has been suspended, it may not recommence scheduled passenger operations nor advertise such service until its fitness to do so has been re-established by the Department. If a carrier wishes to resume such operations, it must file a notice of its intent to do so, accompanied by data supporting the carrier's continuing fitness as set forth in section 204.3 of our rules, at least 45 days before the date on which service is expected to resume.

carrier that we were unable to grant the request due to the lack of sufficient information to support a redetermination of its fitness to operate as a commuter air carrier.

On July 15, 1999, Casino filed evidence of insurance coverage, a registration as an on-demand air taxi operator, and some additional fitness information. However, the information was still not sufficient to enable us to make a determination that Casino remained fit to operate as a commuter and we deferred further action on its request. As a result, the carrier recommenced operations as an on-demand air taxi operator only.

On January 18, 2000, Pacific Skyway, Inc.,² acquired 75 percent of Casino's outstanding common stock and subsequently acquired the remaining 25 percent. As a result of the ownership change, Casino moved its operations from Shreveport, Louisiana, to Santa Maria, California, and underwent a complete change in operations and management.

On May 10, 2000, our Office of Aviation Enforcement and Proceedings (Office of Enforcement) informed Casino that the carrier appeared to be providing scheduled passenger service without the appropriate economic authority from the Department in violation of 14 CFR Part 298 and 49 U.S.C. 41101. In this regard, the Office of Enforcement noted that Casino was providing air transportation for a public charter program on behalf of its parent company, Pacific Skyway, which was being operated on a "regularly scheduled" basis between Santa Maria and Las Vegas. At that time, Casino was providing 19 round trips a week between those points. The Office of Enforcement informed Casino that, in order to carry passengers on five or more round trips per week between two or more points according to a published flight schedule, it must first be found fit as a commuter.³

After further conversations with the Department's staff, on July 21, 2000, Casino filed an application in Docket OST-00-7674 for an exemption from Part 298 to enable it to continue to operate public charter flights on behalf of Pacific Skyway pending a redetermination of its fitness to operate as a commuter.

After review of Casino's application, and based on the hardship that the disruption of these flights might cause to the community of Santa Maria, we decided to grant Casino the requested exemption subject to the conditions that it provide evidence of insurance coverage meeting the requirements of section 205.5(b) for commuter air carriers and that it file complete fitness information for commuter authority within 30 days.⁴ Evidence of insurance coverage was

² Pacific Skyway was incorporated in California in May 1999 to provide air transportation out of Santa Maria, although the company never pursued its own authority to provide such service as a direct air carrier. Pacific Skyway is owned by Mr. David Baskett (51 percent), Mr. Robert Hollingsead (13 percent) and OKU (14 percent). OKU is a real estate development company owned by Mr. Baskett. The remaining 22 percent of the stock is held by 18 shareholders with each holding less than 10 percent.

³ See definition of commuter air carrier in 14 CFR 298.2(e).

⁴ See Order 2000-8-12 issued August 11, 2000. Although the exemption was granted originally for a period of 60 days, it was extended twice, most recently on November 21, 2000, to expire upon Casino's receipt of its effective commuter authority from the Department.

provided, and on August 15, 2000, Casino filed information in support of its request to recommence commuter service.

After reviewing Casino's filing, we requested additional information from the carrier, particularly with respect to the adequacy of its operating plans and financial resources. Although Casino was cooperative in supplying us with information when requested, and while it appeared on several occasions that Casino had or was close to reaching agreement with potential backers to obtain the necessary financing for its operations, each time those plans fell through.

Moreover, on March 6, 2001, Casino ceased all operations pending completion of a new financing plan; its only aircraft has been returned to the owner; its insurance was cancelled effective April 20; and it has lost a number of its key personnel.

Although Casino advised us in a letter dated April 24, 2001, that it was pursuing yet another source of financing, the success of that endeavor is anything but certain. In that letter, Casino states that it is surrendering its Part 298 exemption authority, but requests that the Department take no immediate action on its fitness application. Casino indicates that it intends to file a petition for bankruptcy under Chapter 7 in the U.S. Bankruptcy Court which will allow GIA International Ltd., an aviation and project financing company, to purchase some of Casino's assets. In a separate letter from GIA, that company indicates that, if it decides to acquire Casino's assets, it will "opt for a complete reorganization" of the carrier.

Decision

It has now been over nine months since the original grant of the exemption, and Casino has yet to demonstrate that it meets our fitness standards to operate as a commuter. It has now ceased all operations and is proposing even more substantial changes at the company, not the least of which is the break-up of the company and the sale of some of its assets.

In view of these circumstances, we find that it is no longer in the public interest to allow Casino to hold an exemption from Part 298 to operate scheduled passenger service pending completion of its fitness redetermination. Casino has already agreed to surrender that exemption; therefore, we will cancel it.

Moreover, since we still do not have sufficient information to base a decision on whether Casino remains fit to provide service as a commuter, and since it is clear that the changes proposed at the carrier will be so substantial as to require a new filing, we will dismiss its application for a redetermination of its fitness.

Finally, with respect to Casino's commuter authority, we note that it was suspended in July 1999. Under section 204.7, it would have been subject to revocation for reason of dormancy in July 2000 except for the pendency of Casino's request to resume operations. The carrier has not provided the necessary evidence which would allow us to reinstate this authority, and it is now proposing yet another complete change in operations. If its assets are acquired by GIA

(or any other person), the new owner would have to undergo a complete fitness review and we would require the same information and follow the same procedures as a new air carrier.⁵ Since there is no certainty as to when such a transaction might occur, we will revoke, for reason of dormancy, Casino's authority to provide service as a commuter air carrier.

ACCORDINGLY, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We revoke the commuter air carrier authority issued to Casino Airlines, Inc., by Order 97-3-21.
2. We cancel the exemption from Part 298 as granted to Casino Airlines, Inc., by Order 2000-8-12, as extended.
3. We dismiss the application filed by Casino Airlines, Inc., on June 30, 1999, as amended on August 15, 2000, for a redetermination of its fitness to provide service as a commuter air carrier.
4. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file their petitions within 10 days of the date of service of this order.

The action taken in this order shall be effective immediately and the filing of a petition for review shall not alter its effectiveness.

By:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

(SEAL)

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<http://dms.dot.gov>

⁵ In fact, under the scenario that Casino has presented to us where GIA would acquire only certain of Casino's assets out of bankruptcy, if those assets included Casino's commuter authority, GIA would have to file an application seeking a transfer of that authority to itself. It could not operate unless and until that transfer were approved.

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